IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Lalit Kumar. Versus State of Rajasthan & ors.

S.B. Criminal Misc. Petition No. 409/2003 against the order dated 11-2-2003 passed by the Additional Sessions Judge No. 3, Jodhpur, in Criminal Revision No.2/2003.

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Date of Order: October 17, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. Deepesh Beniwal, for the petitioner.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.
Mr. Rajendra Choudhary, for the non-petitioner No. 2 to 4.

BY THE COURT:

This criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) is directed against the order dated 11.2.2003 passed by the Additional Sessions Judge No.3, Jodhpur (for short, "the Revisional Court" hereinafter) in Criminal Revision No. 2/2003, whereby the revision petition filed by the petitioner against the order dated 29-10-2002 passed by the Chief Judicial Magistrate, Jodhpur (for short, "the trial Court" hereinafter) was dismissed.

I have heard learned counsel for the petitioner and the Public Prosecutor for the State. Carefully gone through the

orders passed by the trial Court as well as the Revisional Court.

The facts and circumstances giving rise to the instant petition are that a complaint was filed by the petitioner against non-petitioners No.2 to 4 before the trial Court on 10-4-2002 alleging the occurrence dated 14-2-2002 at 8:30 PM. The complainant-petitioner himself appeared as a witness and produced witnesses Laxman and Sona Ram. The trial Court recorded their statements under Section 200 and 202 of the Code. By the order dated 29-10-2002, the trial Court, considering the case of the complainant highly improbable, held that there is no ground to proceed against the non-petitioners No.2 to 4 and accordingly dismissed the complaint. That order of the trial Court came to be challenged by the petitioner-complainant before the Revisional Court. The Revisional Court, on consideration of the material available on record, came to the conclusion that from the material on record, there is no ground to proceed against the non-petitioners No.2 to 4.

In the instant case, the occurrence allegedly took place on 14-2-2002, whereas the complaint was filed on 10-4-2002, i.e. nearly after two months without assigning any reason for such a delay. Learned counsel for the petitioner has relied on a decision of the Hon'ble Supreme Court in Debendra Nath Bhattacharyya & ors. Vs. The State of West Bengal & Anr., AIR 1972 SC 1607, wherein the Hon'ble Apex Court held as under:-

> "An order of dismissal of a complaint under Section 203 has to be made on judicially sound grounds. It can only be made where the reasons given disclose that the proceedings cannot terminate successfully in a conviction. It is true that the Magistrate is not debarred, at this stage, from going into the merits of the evidence produced by the complainant. But, the object of such consideration of the merits of the case, at this stage, could only be to determine whether there are sufficient grounds for proceedings further or not. The mere existence of some grounds which would be material in deciding whether the accused should be convicted or acquitted does not generally indicate that the case must necessarily fail. On the other hand, such grounds may indicate the need for proceeding further in order to discover the truth after a full and proper investigation. If, however, a bare perusal of a complaint or the evidence led in support of it show essential ingredients of the offences alleged are absent or that the dispute is only of a civil nature or that there are such patent absurdity in evidence produced that it would be waste of time to proceed further, the complaint could be properly dismissed under Section 203."

It was further held that what the Magistrate has to determine at the stage of issue of process is not the correctness or the probability or improbability of individual items of evidence on disputable grounds, but the existence or otherwise of a prima facie case on the assumption that what is stated can be true unless the prosecution allegations are so fantastic that they cannot reasonably be held to be true.

On close scrutiny of the material on record and the orders passed by the Courts below, it appears that some cheque had been issued by the petitioner in favour of non-petitioner

No.3 Shanti Swaroop, which, on presentation to the bank, were dishonoured and proceeding under Section 138 of the Negotiable Instruments Act, 1881 (for short, "the Act" hereinafter) has been instituted against the present petitioner, which is evidence from para 6 of the order of the Revisional Court. The petitioner is a businessman and if any such occurrence, as alleged by him, would have taken place on 14-2-2002 then there was hardly any reason for the petitioner to have waited for nearly two months and then to file a complaint. In the city like Jodhpur, he could have lodged the report promptly with the police and if not with the police, at least he could have filed a complaint before the Court. Both the Courts below held that prima facie the allegations in the complaint and the statements of the witnesses are absurd and they cannot be reasonably held to be true. It appears that the said complaint is to pre-empt the filing of a complaint by non-petitioner No. 3 Shanti Swaroop under Section 138 of the Act against the petitioner.

In Sunil Kumar Vs. Escorts Yamaha Motors Ltd. & ors., 1999 CR.L.R. (SC) 336, the Hon'ble Apex Court held that the FIR was lodged to pre-empt the filing of complaint under Section 138 of the Act against the appellant therein and in those circumstances, quashing of the FIR was well within the jurisdiction of the High Court as the FIR amounted to abuse of the process of the Court.

It is settled law, as held in State of Punjab Vs. Kasturi Lal & ors., AIR 2005 SC 4135, that exercise of power under Section 482 of the Code is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of Court, and (iii) to otherwise secure the ends of justice. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone Courts exist.

In the instant case, the allegations in the complaint made by the petitioner are inherently improbable and absurd that they cannot be held to be true and, therefore, the trial Court was justified in dismissed the complaint filed by the petitioner, as also the Revisional Court was justified in affirming the order of the trial Court. It cannot be said that the impugned orders would result in serious miscarriage of justice or abuse of the process of the Court warranting interference in the inherent jurisdiction.

The criminal miscellaneous petition has no force and it is, therefore, dismissed.

(H.R. PANWAR), J.

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